DESCRIPTION OF S. 1245

(TAX-EXEMPT BONDS FOR HIGH-SPEED RAIL PROJECTS)

Scheduled for a Hearing

Before the

SENATE COMMITTEE ON FINANCE

on March 24, 1988

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

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JCX-6-88

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INTRODUCTION

The Senate Committee on Finance has scheduled a public hearing on March 24, 1988, on S. 1245 (introduced by Senators Chiles and Graham). The bill would permit tax-exempt bonds to be issued for financing certain private intercity high-speed rail transportation projects.

The first part of the document[1] provides a description of present law, and the second part describes the provisions of S. 1245.

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[1] This document may be cited as follows: Joint Committee on Taxation, Description of S. 1245 (Tax-Exempt Bonds for High-Speed Rail Projects) (JCX-6-88), March 22, 1988.

I. PRESENT LAW

In general: Exemption from tax of interest on certain governmental bonds

Interest on bonds issued by a State or local government to finance governmental activities generally is tax-exempt (Code sec. 103). Interest on private activity bonds is taxable unless a specific exception is provided in the Internal Revenue Code. Private activity bonds are bonds that satisfy one or both of (1) a private business use and private payment test and (2) a private loan test. Private activity bonds qualifying for tax-exemption include exempt-facility bonds, small-issue bonds, qualified mortgage bonds and qualified veterans' mortgage bonds, qualified 501(c)(3) bonds, qualified student loan bonds, and qualified redevelopment bonds.

Exempt-facility bonds are bonds used to finance airports, docks and wharves, mass commuting facilities, water-furnishing facilities, sewage disposal facilities, solid waste disposal facilities, qualified hazardous waste disposal facilities, facilities for the local furnishing of electricity or gas, local district heating or cooling facilities, or qualified multifamily residential rental projects.

Except in the case of mass commuting facilities, as defined below, tax-exempt bonds may not be issued to finance any rail facilities.

Special rules applicable to exempt-facility bonds issued to finance certain transportation facilities

Special rules apply to exempt-facility bonds issued to finance airports, docks and wharves, and mass commuting facilities. All property financed with exempt-facility bonds for airports, docks and wharves, and mass commuting facilities must be owned by a governmental unit. In addition, while private activity bonds generally do not qualify for tax-exemption if 25 percent or more of the proceeds of the issue are used to acquire land, an exception is provided for land acquired in connection with an airport, mass commuting facility, or dock and wharf. In these cases, if the acquisition is for noise abatement or wetland preservation purposes, or for future use as an airport, mass commuting facility, or dock and wharf, and there is no other significant use of such land, the land is disregarded in applying the 25-percent limitation.

Qualifying property.--Training and storage facilities directly related to an airport, dock and wharf, or mass

commuting facility are treated as part of the qualifying facility. However, the following types of facilities do not qualify to be financed as part of these transportation facilities if they are to be used for a private business purpose: (1) lodging facilities; (2) retail facilities located in a terminal, if the facilities are in excess of a size necessary to serve passengers and employees at the transportation facility; (3) retail facilities (other than parking) for passengers or the general public located outside the terminal; (4) office buildings for individuals who are not employees of a governmental unit or of the public airport, port, or mass commuting operating authority; and (5) industrial parks and manufacturing facilities.

Mass commuting facilities eligible for tax-exempt financing include real property (including terminals), machinery, equipment, and furniture serving bus, subway, rail, ferry, or other business commuters on a daily basis, and related storage, training, and repair facilities. Thus, as stated above, mass commuting facilities generally do not include railroad facilities providing intercity and interstate services. In the legislative history accompanying the Tax Reform Act of 1986, the House and Senate conferees noted that there was no intent to prejudge the possible need in the future to allow tax-exempt financing for high-speed rail systems.

Vehicles are not included in the definition of mass commuting facilities, and do not otherwise qualify for exempt-facility bond financing. Accordingly, rolling stock, airplanes, and ships are ineligible for tax-exempt financing.[2]

State private activity bond volume limitations

In general, the amount of tax-exempt private activity bonds that may be issued annually by any State (including local governments within the State) is limited to the greater of (1) $50 for every individual who is a resident of the State or (2) $150 million. Bonds subject to this limitation include most private activity bonds for which tax-exemption is permitted, and the private use portion (in excess of $15 million) of governmental issues.

Although the annual volume limitation applies to exempt-facility bonds issued to finance mass commuting facilities, it does not apply to bonds used to finance airports and docks and wharves. Congress exempted airports and docks and wharves from the State volume limitations on

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[2] A prior-law exception permitting tax-exempt financing of vehicles used in mass commuting expired at the end of 1984.

the basis that, in the case of these large transportation facilities, the use and benefits of the facilities are likely to be enjoyed by a substantial number of persons who are not residents of the State in which the facilities are located; it was therefore considered inappropriate to require that all of the bonds used to finance such facilities be financed from any one State's volume limitation.

II. DESCRIPTION OF S. 1245

Explanation of Provisions

S. 1245 would create a new category of exempt-facility bonds: bonds to finance intercity high-speed rail facilities. The bill would require that the trains be capable of operating at speeds in excess of 120 miles per hour in order to qualify as high-speed.[3] The bill would require that to be qualified exempt facilities the trains must provide passenger and baggage service between metropolitan statistical areas (as defined by the Secretary of Commerce).

If qualified, the proceeds of the bonds could be used to construct or purchase roadbed, rolling stock, passenger terminals, passenger parking lots, siding tracks, storage sheds, and training facilities. The bill also would permit the bonds to be used to purchase additional land for rights of way. Bond proceeds used for the passenger terminal could not include expenditures for any lodging facility. Retail facilities not in excess of a size necessary to serve passengers and employees at the terminal could be financed with these bonds. Bond proceeds used for the terminal could not include expenditures for office space for individuals who are not employees of a governmental unit or of the operating authority for the intercity high-speed rail facility.

In addition, the bill would exempt high-speed rail bonds issued from the State private activity bond volume limitations.[4]

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[3] As introduced, the bill does not require that vehicles actually be capable of operating at speeds in excess of 120 miles per hour on the particular roadbed being financed by the proceeds of the bonds. Presumably, it was intended that a system will qualify for tax-exempt financing only if its trains are capable of sustaining speeds in excess of 120 miles per hour on some significant portion of the tracks on which they operate.

Amtrak currently operates its AEM-7 electric passenger locomotive at speeds of 125 miles per hour in the Northeast corrider. Amtrak also operates F40PH diesel-electric engines which under standard gearing configurations operate at speeds in excess of 100 miles per hour, but which can be geared to operate at speeds in excess of 120 miles per hour. See, Association of American Railroads-Mechanical Division, The Car and Locomotive Cyclopedia of American Practices (Omaha: Simmons-Boardman), 1980.

Effective Date

The provisions of the bill would apply to bonds issued after September 30, 1991.

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[4] Thus, these facilities would be the only privately owned facilities permitted to be financed outside these volume limitations.